

Mandate of the Special Rapporteur on the rights of indigenous peoples

REFERENCE: UA
BRA 6/2015:

28 August 2015

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 24/9.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received **regarding the occupation of several properties located in the city of Antônio João in the state of Mato Grosso do Sul by the Guarani and Kaiowá people. This occupation being carried out by hundreds of Guarani and Kaiowá people, including elders, women and children, who consider this action to be a reclaiming of their traditional lands (Tekoha Ñanderu Marangatu), which were recognised as such by a Presidential Decree of 2005. There have been allegations of gunshots and violence, including a declaration by indigenous community members that they will resist eviction from these lands until death.** This letter follows up on my related communications of 5 August 2015, regarding the situation of the Kaiowá and Guarani communities of in the State of Mato Grosso do Sul.

According to information received:

On 22 August 2015, approximately 300 indigenous Guarani and Kaiowá people arrived and occupied several properties located in the city of Antônio João, in the State of Mato Grosso do Sul.

According to the information provided, the occupation has been met with violent attacks by gunmen. It is suspected that this intimidation and violence is carried out by gunmen and armed militia hired by local farmers, due to the unresolved conflict over land issues, among others. Kaiowá and Guarani occupiers have now declared their intention to remain occupying those lands, until their land-claims

are settled. According to information received, the National Public Security Force (Força Nacional de Segurança Pública) have not yet intervened and it is feared that without their presence, the conflict may escalate, resulting in the loss of lives.

Over the past decades, the indigenous peoples of the State of Mato Grosso do Sul, including the Kaiowá and Guarani, have attempted to regain ancestral lands that they gradually had lost control of since the beginning of the 20th century. This process culminated in 2005 when former President Luiz Inácio Lula da Silva, issued Presidential Decrees over 41 indigenous lands in State of Mato Grosso do Sul, declaring that they should be demarcated for the Kaiowá and Guarani. These lands have important significance for the Kaiowá and Guarani, and contain numerous sacred sites, and cemeteries.

The occupied land in question lies within an area that has been determined to be an indigenous Guarani and Kaiowá territory (terra indígena/tekoha Ñanderu Marangatu). This was established by way of Presidential Decree signed on 28 March 2005 by former President Luiz Inácio Lula da Silva (Presidential decree of 28 March 2005; officially published on 29 March 2005).

Despite this Decree, the determination regarding Tekoha Ñanderu Marangatu has been the subject of legal challenges since 2005. On 28 July 2005, the Federal Supreme Court (Supremo Tribunal Federal) upheld an appeal and suspended the ratification of these lands. At that time the presiding judge issued an eviction order against the Guarani and Kaiowá people, on the basis that indigenous presence in those lands would impact upon the ability to decide the merits of the case. The Guarani and Kaiowá of Ñanderu Marangatu were therefore evicted from their lands in 2005, pending a decision on the merits of the case. The case (Mandado de Segurança, MS 25463, Relator Min. Gilmar Mendes) remains pending before the courts. Since then, indigenous peoples have continually demanded that they be able to return to their traditional lands in Ñanderu Marangatu.

Since 2005 the evicted community have been forced to live in a small, overcrowded plot of land, without access or ability to engage in their traditional livelihoods, and therefore often exist in conditions of extreme poverty, with lack of access to adequate food, housing, clean water sanitation, healthcare and education.

The evicted community are also regularly subject to on-going violence and intimidation. According to the information received, between 2003 and 2013, over 290 Guarani and Kaiowá leaders have been killed. Indigenous women and girls suffer high rates of sexual and gender based violence. It is suspected that this

intimidation and violence is carried out by gunmen and armed militia hired by local farmers, due to the unresolved conflict over land issues, among others.

Without making a judgment as to the accuracy of the information made available to me, the information described above raises serious concerns over the human rights situation of indigenous peoples in Mato Grosso do Sul.

In particular, I regret the gross delays in the court proceedings regarding the demarcation procedures. I also remind your government that the presidential decree issued regarding demarcation of Tekoha Nãnderu Marangatu was the culmination of a lengthy process, overseen by a technical team from FUNAI, a procedure which allowed for an appeal and contestation. Furthermore, I also remind your Excellency's Government that Article 67 of the Temporary Constitutional Provisions Act, together with article 231 of the Federal Constitution of 1988 provide that 'The Union shall conclude the demarcation of the Indian lands within 5 years of the promulgation of the Constitution.'

The present case and the issues it raises appears, regrettably, to be part of a broader pattern of failure to resolve indigenous land claims. According to the information received, a large number of indigenous lands throughout Brazil identified for demarcation have judicially contested. However there has been very slow, or no progress on these cases before the courts. In practice, therefore, it seems that these appeals have the effect of freezing progress towards demarcation.

Moreover, while I am pleased to have received information that the planned evictions Guarani and Kaiowá communities from the seven Tekohas mentioned in the Urgent Action of 5 August 2015 were not carried out, I regret that the current situation indicates that the longstanding tensions, including the unresolved land demarcation scheme and gross delays in court procedures, will require on-going, serious and dedicated attention and committed action by Your Excellency's Government to deescalate the situation and avoid future conflicts.

I would therefore urge your Excellency's Government to avoid an escalation of conflict or violence against the indigenous peoples referred to in this communication.

As I continue to monitor the circumstances surrounding these situations, I would be grateful if your Excellency's Government could provide any additional information it deems relevant. Additionally, we would be grateful if you could provide information on the following:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.

2. Are the facts alleged in the above summary of the case accurate?
3. What are the measures your Government is taking to ensure that the rights to life and personal integrity of the indigenous Guarani and Kaiowá peoples in the locality of Nanderu Marangatu are protected against undue force by security forces or other third party actors?
4. Is a meeting between indigenous leaders, and other relevant stakeholders, at the Ministerial level, being considered in order to address the concerns related to the lack of demarcation of these lands, and the on-going social and economic conditions of Guarani and Kaiowá people and other indigenous peoples of the State of Mato Grosso do Sul?
5. Please provide additional information about the status of land demarcations in the state of Mato Grosso do Sul and the efforts of the Government in finalising those processes.

I would also like to inform your Excellency's Government that in my role as Special Rapporteur on the rights of indigenous peoples, I am fully available to assist in these processes in any way, including by visiting the area and meeting with all stakeholders. I am ready to make myself available for such a visit at your earliest convenience.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples